



DEPARTMENT OF ENERGY

Grid Deployment Office Draft Guidance on Implementing the Maintaining and Enhancing Hydroelectricity Incentives

AGENCY: Grid Deployment Office, Office of the Under Secretary for Infrastructure, Department of Energy.

ACTION: Notification of availability of Draft Guidance and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of availability of a Draft Guidance and requests comment on the Draft Guidance to inform its implementation of hydroelectric incentives in the Infrastructure Investment and Jobs Act of 2021 (IIJA). The Draft Guidance describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of qualified hydroelectric facilities pursuant to the Energy Policy Act of 2005 (EPAc 2005), Maintaining and Enhancing Hydroelectricity Incentives.

DATES: DOE will accept comments, data, and information regarding this Draft Guidance no later than 5:00 p.m. ET on February 28, 2023. See “Public participation” under “**SUPPLEMENTARY INFORMATION**,” sections for details.

DOE will hold a public meeting via webinar on Thursday, February 16, 2023, at 1:00 pm ET, see “Public Participation” under “**SUPPLEMENTARY INFORMATION**,” sections for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE is also offering an opportunity to submit an individual verbal response in lieu of or in addition to providing written responses to the Draft Guidance. Respondents may request a 30-minute individual unrecorded opportunity to provide a verbal response to DOE staff. Requests for an individual verbal response must be requested no later than 5:00 pm (ET) on Thursday,

February 16, 2023. See “Public participation” under “**SUPPLEMENTARY INFORMATION**,” sections for details.

ADDRESSES: Interested parties are to submit written comments electronically to *hydroelectricincentives@hq.doe.gov*. DOE’s Draft Guidance is available at: *<https://www.energy.gov/gdo/hydroelectric-247-draft-guidance>*.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Ms. Luciana Ciocci, U.S. Department of Energy, Grid Deployment Office, 1000 Independence Ave., S.W., Washington, D.C., 20585, (202) 480-5768 or by email at *hydroelectricincentives@hq.doe.gov*. Further instruction can be found in the Draft Guidance posted at *<https://www.energy.gov/gdo/hydroelectric-247-draft-guidance>*. Electronic communications are recommended for correspondence and required for submission of comments.

SUPPLEMENTARY INFORMATION: Through section 40333 of the IIJA, Pub. L. No. 117-58, Congress amended EAct 2005, Pub. L. No. 109–58, to establish Section 247, Maintaining and Enhancing Hydroelectricity Incentives. *See* 42 U.S.C. 15883. The provision requires the Secretary to make incentive payments to the owner or authorized operator of a qualified hydroelectric facility, subject to the availability of appropriations, for capital improvements directly related to improving grid resilience, improving dam safety, and environmental improvements.¹ Incentive payments may be made upon receipt by the Secretary of an incentive payment application that demonstrates that the applicant is eligible to receive such payment and satisfies the other requirements as deemed necessary.

Under the statute, the incentive payments include the following limitations: an incentive payment shall not exceed 30 percent of the costs of the applicable capital improvement(s); and no more than one incentive payment may be made to a single qualified hydroelectric facility in any fiscal

¹ *See* 42 U.S.C. 15883(b).

year that shall not exceed \$5,000,000.²

On June 30, 2022, DOE released a Request for Information (RFI) to provide interested parties the opportunity to provide preliminary feedback on the design of the section 247 of EAct 2005 incentive program.³ Based on the RFI responses, the DOE Grid Deployment Office's (GDO) Hydroelectric Incentives Program has developed the Draft Guidance and now seeks public comment on this draft.

The Draft Guidance describes the application process and the information necessary for the Secretary of Energy to make incentive payments to owners and authorized operators of qualified hydroelectric facilities pursuant to section 247 of EAct 2005, Maintaining and Enhancing Hydroelectricity Incentives.

The Draft Guidance consists of fourteen sections.

- I. Purpose and Scope
- II. Authority
- III. List of Definitions
- IV. Who May Apply?
- V. What is a Qualified Hydroelectric Facility?
- VI. How will the Program allocate funding for eligible capital improvement projects?
- VII. At what stage in the development process would a capital improvement project be eligible to apply for an incentive payment?
- VIII. What are the General Application Requirements?
- IX. What types of capital improvement projects qualify for incentive payments and what information does DOE need to determine whether a project is eligible?
 - Grid Resiliency

² See 42 U.S.C. 15883(c).

³ See 87 FR 40515 (Jul 7, 2022).

- Dam Safety
 - Environmental Improvements
- X. What is the timing of incentive payments?
- XI. What are the procedures for processing applications?
- XII. FAQ (this section will include questions that don't easily fit within the above categories)
- XIII. Funding Restrictions
- XIV. Administrative Appeals

While reviewers are welcome to provide comments on all aspects of this Draft Guidance, DOE is particularly interested in receiving comments with respect to the following five questions.

- 1) The DOE proposes to use a scoring criteria rubric to prioritize which capital improvement applications are awarded funding in the event the program is oversubscribed (*i.e.*, more eligible applications than available funding). DOE seeks feedback on this approach. (*See* Section IX of the Draft Guidance).
- 2) The DOE proposes to distribute funds in an equitable manner in the event the program is oversubscribed. To do so, the DOE plans to fund applications in all three of the categories of capital improvements (*i.e.*, improving grid resiliency, improving dam safety, and environmental improvements) by selecting the top scoring application in each category for small projects and remaining eligible projects. DOE seeks feedback on this approach. (*See* Section XI of the Draft Guidance).
- 3) Recognizing that small hydropower facilities make up 75 percent of the nation's hydropower fleet, the DOE intends to allocate up to 25 percent of the program funding to support capital improvements made at small hydropower projects (nameplate capacity of 10 MW or less that is owned or operated by a small business, Indian tribe, municipality, or electric cooperative.) DOE seeks feedback on this approach. (*See* Section IV of the Draft Guidance).
- 4) To balance risk while incentivizing hydropower owners and operators to make qualified

capital improvements, DOE is proposing to provide a portion of the funding (up to 10 percent) up front and the remainder upon completion of the capital improvement(s).

DOE seeks feedback on this approach. (*See* Section X of the Draft Guidance).

- 5) DOE estimates eight (8) hours of preparation time for the EPC Act 2005 Section 247 application. DOE seeks comment on this estimate.

Public Participation: DOE is offering three response options to the request for comment on Draft Guidance.

Public Informational Webinar: On Thursday, February 16, 2023, at 1:00 pm ET, an informal Public Informational Webinar will be held to discuss general feedback from interested parties regarding the content of Draft Guidance. To register for this informational webinar, please sign up at: <https://nrel.zoomgov.com/meeting/register/vJltce-srj4tHat8gC1lnCcPw5PvjSVDogo>.

Participants are responsible for ensuring their systems are compatible with the webinar software. The webinar is open to all members of the public. Any person who has an interest in the topics addressed in the Draft Guidance or identified in this request for comment, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar within the webinar registration page. A DOE designated official will preside over the webinar and may also use a professional facilitator to aid discussion. The webinar will not be a judicial or evidentiary-type public hearing. The webinar will be recorded, and a transcript of the proceedings will be made available on DOE's website. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws.

Written Response: Interested parties are to submit written comments electronically to hydroelectricincentives@hq.doe.gov no later than 5:00 pm (ET) on Tuesday, February 28, 2023.

Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.*, zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) or Adobe PDF (.pdf) attachment to the email, and no more than 15 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted.

For ease of replying and to aid categorization of your responses, please copy and paste the questions from this request for comment or the relevant section of the Draft Guidance as a template for your response. Respondents may answer as many or as few questions as they wish. DOE GDO will not respond to individual submissions or publish publicly a compendium of responses. A response to this request for comment will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Respondents are requested to provide the following information at the start of their written response to this request for comment:

- Company / institution name;
- Company / institution contact;
- Contact's address, phone number, and e-mail address.

Individual Verbal Response: DOE is also offering an opportunity to submit an individual verbal response in lieu of or in addition to providing written responses to the Draft Guidance, respondents may request a 30-minute individual unrecorded opportunity to provide a verbal response to a DOE staff member. The discussion with a DOE staff member will be limited to the topics presented in the Draft Guidance. Please submit your request to hydroelectricincentives@hq.doe.gov and you will be contacted by a GDO staff member to schedule a time. Requests for an individual verbal response must be submitted no later than 5:00 pm (ET) on Thursday, February 16, 2023.

Respondents will be asked to provide the following information at the start of the verbal response to this request for comment:

- A. Company / institution name;
- B. Company / institution contact;
- C. Contact's address, phone number, and e-mail address.

Disclaimer and Important Notes

This request for comment is not a Funding Opportunity Announcement (FOA); therefore, GDO is not accepting applications at this time. Responding to this request does not provide any advantage or disadvantage to potential applicants if GDO chooses to issue a solicitation regarding the subject matter in the future. Final details, including the anticipated size, quantity, and timing of GDO funded incentives, will be subject to Congressional appropriations and direction.

Any information obtained as a result of this request for comment is intended to be used by the Government on a non-attribution basis for planning and strategy development; this request for comment does not constitute a formal solicitation for proposals or abstracts. Your response to this request for comment will be treated as information only. GDO will review and consider all responses in its formulation of program strategies for the identified materials of interest that are the subject of this request. GDO will not provide reimbursement for costs incurred in responding to this request for comment. Respondents are advised that GDO is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this request for comment. Responses to this request for comment do not bind GDO to any further actions related to this topic.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these

documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Evaluation and Administration by Federal and Non-Federal Personnel

Federal employees are subject to the non-disclosure requirements of a criminal statute, the Trade Secrets Act, 18 U.S.C. 1905. The Government may seek the advice of qualified non-Federal personnel. The Government may also use non-Federal personnel to conduct routine, nondiscretionary administrative activities. The respondents, by submitting their response, consent to GDO providing their response to non-Federal parties. Non-Federal parties given access to responses must be subject to an appropriate obligation of confidentiality prior to being given the access. Submissions may be reviewed by support contractors and private consultants.

Signing Authority:

This document of the Department of Energy was signed on February 8, 2023, by Maria Duaine Robinson, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC on February 10, 2023.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

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